THE ETHICS OF NATARIES IN SHARIA CONTRACTS

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Abstract

Notary is an official in the legal field who has obligations or duties in the legal field, especially a type of legal consultation which is usually in the civil domain, such as relating to an agreement or something similar to people in need. Notaries also have the authority to provide or issue authentic deeds that have legal force both in terms of proof and legal certainty. Agreements that can use the services of a notary so that they have strong legal value are not only based on conventional contract models but also contracts or agreements that use sharia principles. A notary also has obligations and limitations regarding his authority based on the Notary Position Law and the Notary Code of Ethics. Regardless of the background of a notary, whether a Muslim or not, the notary is required to behave professionally, which means he is able to carry out his authority and duties in accordance with the legal corridors legalized for him. If a notary is faced with making a deed using a contract model that uses sharia principles, then from a legal point of view the only thing that can be used is sharia principles which are legal from the point of view of state law. Many types of contracts that have been legalized are stated in the policies or authority currently held by sharia financial institutions or similar because all types of deeds issued by them are also considered to be authentic Atta or deeds that can have legal value. Apart from the notary's attachment to the rules that legalize his authority in Islam, there are 5 basic principles related to the professionalism of a legal profession, namely the principle of freedom, the principle of justice, the principle of honesty, the principle of free will, the principle of responsibility.

Keywords **:** ***notary, sharia contract, notary code of ethics***

1. INTRODUCTION

Broadly speaking, a notary public is a legal officer who has duties and responsibilities in the field of law, particularly providing legal consultations in civil matters such as agreements or similar matters to the public in need. Typically, a notary is regarded as an officer with a highly strategic role in facilitating agreements, whether of high economic value or under specific circumstances, especially in the creation of authentic deeds, memorandum of understanding, or similar documents. (Yusuf, 2015). A Notary Public, also known as one of the legal professions in Indonesia, is part of the legal profession which demands the fulfillment of moral values from those practicing it. It can be said that moral values are the guiding force and foundation for noble actions and professionalism of a legal officer. The fulfillment of moral values thus fulfills the ethos and demands imposed on those in the profession (Wajdi, 2020). Today, the types of agreements or collaborations that require a notary for the community to obtain valid legal proof are not limited solely to conventional agreement models as stipulated in Dutch inheritance law and similar national laws. They have also expanded to include agreements or contracts based on Sharia principles, guided by religious texts. This development extends even to parties not obligated to follow Islamic principles, such as non-Muslims. Surprisingly, many people still feel hesitant or fearful about utilizing notarial services, which are capable of providing legal validation and certainty through the issuance of authentic deeds. Yet, in reality, Allah has provided guidance for those seeking to enter into agreements, emphasizing the importance of testimony and legal validation principles, Q.S Al-Baqarah, verse 282:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ إِذَا تَدَايَنتُم بِدَيۡنٍ إِلَىٰٓ أَجَلٖ مُّسَمّٗى فَٱكۡتُبُوهُۚ وَلۡيَكۡتُب بَّيۡنَكُمۡ كَاتِبُۢ بِٱلۡعَدۡلِۚ وَلَا يَأۡبَ كَاتِبٌ أَن يَكۡتُبَ كَمَا عَلَّمَهُ ٱللَّهُۚ فَلۡيَكۡتُبۡ وَلۡيُمۡلِلِ ٱلَّذِي عَلَيۡهِ ٱلۡحَقُّ وَلۡيَتَّقِ ٱللَّهَ رَبَّهُۥ وَلَا يَبۡخَسۡ مِنۡهُ شَيۡـٔٗاۚ فَإِن كَانَ ٱلَّذِي عَلَيۡهِ ٱلۡحَقُّ سَفِيهًا أَوۡ ضَعِيفًا أَوۡ لَا يَسۡتَطِيعُ أَن يُمِلَّ هُوَ

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فَلْيُمْلِلْ وَلِيُّهُۥ بِٱلْعَدْلِ ۚ وَٱسْتَشْهِدُوا۟ شَهِيدَيْنِ مِن رِّجَالِكُمْ ۖ فَإِن لَّمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَٱمْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ ٱلشُّهَدَآءِ أَن تَضِلَّ إِحْدَىٰهُمَا فَتُذَكِّرَ إِحْدَىٰهُمَا ٱلْأُخْرَىٰ ۚ وَلَا يَأْبَ ٱلشُّهَدَآءُ إِذَا مَا دُعُوا۟ ۚ وَلَا تَسْـَٔمُوٓا۟ أَن تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰٓ أَجَلِهِۦ ۚ ذَٰلِكُمْ أَقْسَطُ عِندَ ٱللَّهِ وَأَقْوَمُ لِلشَّهَٰدَةِ وَأَدْنَىٰٓ أَلَّا تَرْتَابُوٓا۟ إِلَّآ أَن تَكُونَ تِجَٰرَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا ۗ وَأَشْهِدُوٓا۟ إِذَا تَبَايَعْتُمْ ۖ وَلَا يُضَآرَّ كَاتِبٌ وَلَا شَهِيدٌ ۚ وَإِن تَفْعَلُوا۟ فَإِنَّهُۥ فُسُوقٌۢ بِكُمْ ۗ وَٱتَّقُوا۟ ٱللَّهَ ۖ وَيُعَلِّمُكُمُ ٱللَّهُ ۗ وَٱللَّهُ بِكُلِّ شَىْءٍ عَلِيمٌ

O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified] term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things.

The verse above, which is the longest verse in the Quran, emphasizes that the values of legal certainty and justification are paramount and must be achieved and adhered to in Islamic jurisprudence, especially when entering into specific agreements or contracts. This verse also explains that recording agreements or transactions is important because the testimony, particularly when written in transactions, holds the highest value in providing evidence and legal certainty. The moral values imposed on the legal profession, specifically on notaries in this case, can be understood as the way or general guidelines for legal professionals to conduct themselves and fulfill the responsibilities and authorities entrusted to them. Agreed-upon moral values, deemed as correct, are then legalized into written rules or norms that are agreed upon and implemented. These moral values can certainly be derived not only from these rules but also from inherent human values such as virtue or ethics, especially when individuals are bound by religious norms. Therefore, a more in-depth discussion is needed regarding the ethics of a notary in carrying out their duties, particularly in Sharia contracts that fall under their jurisdiction, and an overview of Islamic studies related to this matter.

2. IMPLEMENTATION METHOD

This research is an analytical descriptive study that attempts to delineate and provide an explanation of the behavior and exercise of authority of a notary, especially in types of agreements or contracts based on Sharia principles. The method employed in this research is qualitative, focusing on a normative theological approach by exploring the provisions and basic ethics, particularly those regulated into specific rules, whether in the form of laws or common agreements such as the notary's code of ethics formulated by the Indonesian Notary Association. It also involves an understanding and deepening of religious thought, particularly concerning the ethics or morality of individuals within legal professions or those operating in public office.

3. RESULTS AND DISCUSSION

Notary Definition

The term "notary" in the Kamus Besar Bahasa Indonesia Online 6 (KBBI Daring VI) refers to a person who is authorized by the government to authenticate and witness various agreements, wills, deeds, and the like. The word "notary" linguistically originated from ancient Roman society, where the term "notarius" was used to describe a person whose job was primarily that of a scribe. This was during a time when literacy was a skill possessed by relatively few individuals. Around the 2nd century AD, the role of a notarius evolved to denote someone responsible for record-

keeping or rapid writing, typically working under imperial direction for governmental affairs (Notodisoerjo, 2007).

Referring to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions, Article 1 defines a notary as:

> "A Notary Public is an official authorized to prepare Authentic Deeds and possesses other powers as specified in this law or under other laws."

The term "public official" can be understood as someone who, through their position, serves public entities such as provinces, districts, municipalities, autonomous regions, representing these bodies in fulfilling obligations and carrying out duties within their official capacity. Therefore, it can be said that a notary public is appointed by the state and undoubtedly works for the state. In other words, notaries exist because society needs them, thus they are established by the state (Siahaan, 2020).

A notary, as a public official, is a translation of the Dutch inheritance found in Article 1 of the Notary Office Regulation, which is Openbare Ambtenaren stated in Article 1 of the Regulations on the Notary Office in Indonesia, later translated to Pejabat Umum. This term is also found in Article 1868 of the Civil Code (KUHPerdata). The term Openbare Ambtenaren in Article 1868 of the Civil Code (BW) was translated to Pejabat Umum by R. Soebekti and R. Tjitrosudibio (Tobing, 1999). In the terms articulated by Notary Tan Thong Kie, a notary can be understood as a respected figure in society, and to this day, the position of a notary continues to command respect. A notary is typically regarded as an official from whom one can obtain reliable advice. Everything written and established by a notary is considered valid; they create legally robust documents in a legal process (Kie, 2000).

According to Budiono (2013), the primary authority of a Notary is to create authentic deeds concerning all actions, agreements, and determinations required by regulations and/or desired by parties concerned to be stated in authentic deeds, ensuring the certainty of the deed's date, keeping the deed, issuing copies, excerpts, and transcripts of the deed, all as long as the creation of these deeds is not assigned or exempted to another official or person, or another person designated by the UUJN. Based on the explanation above, we can infer that a notary is indeed a public official whose primary duty is succinctly described as the drafting of authentic deeds. An authentic deed or official document possessing legal value and evidentiary weight inherently contains legal certainty. Therefore, authentic letters or deeds prepared by a notary are typically used to secure contracts or agreements of commercial and economic significance, thus imbuing the deed with legal certainty and validity in the eyes of the law. The concept of a deed here is not limited solely to conventional contracts but can also extend to various types of Sharia contracts. Further elaboration on Sharia contracts will be provided subsequently.

Sharia Contract Definition

The term "syariah contract" is a familiar term in Indonesian society. The term "syariah contract" consists of two parts: "akad" and "syariah". The word "akad" has its roots in the Arabic word "ʻaqada", which means to bind or strengthen. Its meaning is to gather or collect two ends of a rope and bind one to the other so that they are connected and become one rope. Etymologically, "akad" (al-aqdu) also means "al-ittifaq", which signifies commitment, agreement, and consensus (Al-Fairuzabadi, 2005). In the Indonesian dictionary, "akad" is defined as an agreement, covenant, or contract. The term "agreement" can be understood as an event where one person promises to another individual or entity, whether individual or legal, or an event where two parties promise each other to do something. Therefore, broadly speaking, the term "akad" can be understood as an agreement made by two parties, regardless of the nature of the agreement or the parties involved. The term "akad" is only understood in a focused manner when placed within a specific study or subject matter. The placement of this term "akad" is then termed as an "akad" in a particular or narrow sense. According to Ibnu Abidin, "akad" is defined as the bond between offer and acceptance, in accordance with Shariah, which affects the subject of the contract. Intended in accordance with Shariah is that an "akad" performed by two or more persons must not be contrary to Shariah, such as an agreement involving the determination of interest in trade. As for the "akad"

affecting its subject, it involves a change in legal status as a result of the "akad," such as a transfer of ownership, the existence of utilization rights, and so forth (Abidin,. The term "syariah" etymologically originates from the Arabic word "syara'a," which can mean something that is opened with the purpose of taking something that is inside it. In simpler terms, "syara'a" is the root or basis of "syariah," which implies something that is opened or placed within a specific context. Therefore, linguistically, the term "syariat" refers to something placed on or directed towards something with the intention of being taken. However, nowadays, the term "syariat" generally refers to a set of rules used within a religion. The term "sharia" can be understood from the perspective of the Quran and also from the perspective of scholars. In the Quran, the word "sharia" can be found in several verses, one of which is in Surah Ash-Shura, verse 13, which reads:

۞شَرَعَ لَكُم مِّنَ ٱلدِّينِ مَا وَصَّىٰ بِهِۦ نُوحًا وَٱلَّذِيٓ أَوۡحَيۡنَآ إِلَيۡكَ وَمَا وَصَّيۡنَا بِهِۦٓ إِبۡرَٰهِيمَ وَمُوسَىٰ وَعِيسَىٰٓۖ أَنۡ أَقِيمُواْ ٱلدِّينَ وَلَا تَتَفَرَّقُواْ فِيهِۚ كَبُرَ عَلَى ٱلۡمُشۡرِكِينَ مَا تَدۡعُوهُمۡ إِلَيۡهِۚ ٱللَّهُ يَجۡتَبِيٓ إِلَيۡهِ مَن يَشَآءُ وَيَهۡدِيٓ إِلَيۡهِ مَن يُنِيبُ

He has ordained for you of religion what He enjoined upon Noah and that which We have revealed to you, [O Muhammad], and what We enjoined upon Abraham and Moses and Jesus - to establish the religion and not be divided therein. Difficult for those who associate others with Allah is that to which you invite them. Allah chooses for Himself whom He wills and guides to Himself whoever turns back [to Him]. From the sentence above, it can be understood that the mention of the word "syariat" explains that its connotation refers to rules related to religion or something predetermined by the religion itself. The absoluteness of the word "syariat" found in several verses of the Quran provides the meaning of a mandatory command to be followed, as evidenced by the substance of the verses containing the word "syariat" within them.

The terminology of Sharia law, according to scholars, has slightly different interpretations and formulations. Zuhaili (1985) defines Sharia as practical laws that vary between one prophet and another, and subsequent laws abrogate previous ones. Meanwhile, according to As-Syathibi, Sharia can be understood as the binding provisions of Allah that apply to every accountable person, encompassing actions, speech, beliefs, or convictions contained within that Sharia as a whole. Therefore, it can be understood that sharia is the revelation or laws and regulations established by Allah, covering all aspects of life, both beliefs and practices, with the aim of achieving goodness and welfare in worldly life. Based on this understanding of sharia, the term is often equated with religion itself because the source of sharia is the revelation conveyed by the Prophet Muhammad (SAW).

The term "akad syariah" generally refers to an agreement or contract governed by laws, principles, or norms derived from Islamic jurisprudence (Sharia) based on religious texts. This type of contract pertains specifically to transactions (muamalah) and is crucial as it provides information and formulation depicting the rights, obligations, and roles of each party in realizing the intended objectives of the agreement. Each party involved bears binding rights and obligations concerning the subject matter of the contract, extending to matters related to the resolution process in case of failure or breach (wanprestasi) among the parties (Arifin, 2014). Thus, it can be said that contracts hold a central position in the economic transactions among humans (muamalah). Contracts are key to the emergence of rights and obligations (achievements) that arise from contractual relationships (Rosyadi, 2017).

Notary Legality

As previously explained, a notary public is a government official tasked by the state to fulfill public needs. The intended need here is to provide a legal party akin to a witness who can assist in or create authentic deeds for various specific purposes. However, a notary is not a public official like a government employee as defined in the Republic of Indonesia Law Number 43 of 1999 on Amendments to Law Number 8 of 1974 concerning the Basic Principles of Civil Servants. This is because a notary does not receive a salary from the government and can only accept fees or honorariums from clients or the public utilizing their services. Therefore, it can be said that a Notary is a government employee without receiving a salary from the government. Even though a

notary is also retired by the government or state, they do not receive pension funds from the government like regular civil servants (Wajdi, 2020). However, a Notary is not considered a State Administrative Official (hereinafter referred to as TUN), therefore a Notary cannot be prosecuted for corruption, as stipulated in Article 11 letter a of Law Number 30 of 2002 concerning the Corruption Eradication Commission (Sesung et al., 2017). Referring to Article 2 of Law Number 30 of 2004 concerning Notary Position, it is explained that a notary is appointed and legalized by the Minister, whereby the Minister can grant operational legality only if a notary meets the required qualifications, including but not limited to:

1. Indonesian citizen (Indonesian national).
2. Fear God Almighty;
3. Minimum age of 27 years;
4. Physically and Spiritually Healthy;
5. Bachelor of law degree and graduate of the second degree of notary;
6. Have undergone and completed or actually worked as a Notary employee for 24 (twenty-four) consecutive months (2 years) at the Notary office on their own initiative or on the recommendation of the Notary Organization after passing the second strata of notary;
7. Not having the status of a civil servant, civil servant, State Official, advocate, or not currently holding other positions which by law are prohibited to be concurrently with the Notary Department.

As explained above that notaries have the duty and authority in the form of constitrating the legal relationship between the parties in written form and certain formats, so that it is an authentic deed. The word authority itself can be defined in the form of formal powers derived from or granted by law such as legislative power, executive power, judicial power. Thus in authority there is power and in authority authority is born (Juanda, 2014). However, please note that in legal terms, the discussion of authority is a discussion of the theory of authority. There are three main discussions in authority theory that are interrelated but slightly different, namely the terms power, authority, and authority. Power is often simply equated with authority, and power is often interchanged with the term authority, and vice versa. Even authority is often equated with authority. Power usually takes the form of a relationship in the sense that there is one party who rules and another party who is governed (Budiarjo, 2008).

In understanding the authority, especially imposed on public officials in relation to public legal interests, it can simply be done by understanding the granting of new government authority by a provision in laws and regulations. An authority contained in the government system will occur through the State Administration agency or agency to other State Administration. Generally, this authority will be given to the authorities by way of mandate or delegation. This is a distribution of authority known as attribution (Indroharto, 1993). Meanwhile, if it is related to notary obligations, it is regulated in Article 16 paragraph (1) of the Notary Position Law, which states that in carrying out their position, notaries are obliged as follows (Alkatiri, 2008):

1. Act trustfully, honestly, thoroughly, independently, impartially, and safeguard the interests of parties involved in legal actions. In this case the notary must not side or defend one of the parties, the notary must be fair and not contradict the laws and regulations.
2. Attach letters and documents as well as fingerprints of the face to the Minuta Deed.
3. Create a deed in the form of a Minuta Deed and save it as part of the Notary Protocol. This means that the notary must maintain the authenticity of a deed he made by storing the Minuta Deed in its original form, so that if there is forgery or misuse of grosse, the copy, or quotation can be immediately known easily by matching it with the original.
4. Issue a Grosse Deed, Copy of Deed, or Quotation of Deed based on Minuta Deed. The Grosse deed here is the first Grosse, while the subsequent ones are issued only by court order.
5. Provide services in accordance with the provisions in the Notary Office Law, unless there is a reason to refuse it.
6. Keep confidential everything about the deed he made and all information obtained for the making of the deed pursuant to 67 by oath / promise of office, unless the law provides

otherwise. Here the notary is obliged to keep confidential everything related to the deed and other papers is to protect the interests of all parties related to the deed.

7. Bind the deed made in 1 (one) month into a book containing no more than 50 (fifty) deeds, and if the number of deeds cannot be contained in one book, the deed can be bound into more than one book, and record the number of Minuta Deeds, months, and years of manufacture on the cover of each book.
8. Make a list of deed of protest against non-payment or non-receipt of securities.
9. Make a list of deeds relating to wills in the order of time of making deeds each month. This obligation is important to be able to guarantee protection of the interests of heirs, which at any time can be traced or traced the truth of a will deed that has been made before a notary.
10. Send a list of deeds as referred to in letter i or a list of nil relating to wills to the Central List of Wills of the Department whose duties and responsibilities are in the field of notarial affairs within 5 (five) days in the first week of each following month.
11. Record in the repertorium the date of sending the list of wills at the end of each month.
12. Have a stamp / stamp containing the national emblem of the Republic of Indonesia and in the space surrounding it written the name, position, and place of residence concerned.
13. Read the deed in front of the face attended by at least 2 (two) witnesses and signed at that time by the face, witnesses, and notary. The notary here must be physically present and read the deed in front of the parties involved in the deed and sign the deed in the presence of the deed and witnesses. However, it is not mandatory, if the complainants want the deed not to be read because the complainant has read it himself, knows, and understands its contents, provided that it is stated in the closing of the deed and on every page of the Minuta Deed is paraphrased by the face, witnesses, and Notary.
14. Accepting apprentices of notary candidates. Notaries are required to accept internships for notary candidates by educating them to prepare prospective notaries who will later be able to become professional notaries.

If referring to article 15 paragraph (1), it is clearly stated that notaries have the authority to make deeds instead of making letters, such as Power of Attorney to Impose Dependent Rights (SKMHT) or making other letters, such as Certificate of Inheritance (SKW). In addition, authentic deeds that become the authority of notaries are also the authority of officials or government agencies or other levels, such as (Adjie, 2011):

1. In Articles 1405 and 1406 *BW* , namely the Deed of minutes on the offer of cash payment and consignment;
2. In Article 1227 BW in the form of a Deed of minutes regarding the negligence of the mortgage depositor official;
3. Article 281 BW is a Deed of recognition of children out of wedlock;
4. Articles 143 and 218 WvK in the form of making a Deed of protest of money orders and checks;
5. Make a deed of auction minutes;
6. Power of Attorney Imposes Dependent Rights (SKMHT).

Regarding the authority of the notary, it is more clearly stated and limited as contained in article 15 paragraph (3) of the Notary Office Law, it is explained that the authority of the notary can increase if there are provisions that arise in the future based on other legal rules that come later. In other words, it can also be understood that if the notary carries out or performs actions that are outside of the legalized authority in the eyes of the rule of law, the notary has committed actions beyond its authority so that the authentic product or deed issued by the notary becomes *non-executable* or declared non-binding and in the view of the law is said to be unenforceable. Then if this happens, the party or client who feels aggrieved by the act of exceeding the notary's authority can sue the notary civilly in the district court (Yuniati and Wahyuningsih, 2017).

Sharia Agreement In Notary Authority

The discussion of the contract in the study of sharia is contained in the discussion of fiqh muamalah. There are various types of contracts that can be discussed and included in the type of

agreement that is the authority of the notary. Some types of contracts in the discussion of muamalah include the following:

1. Wadi'ah Agreement
   Linguistically the word wadi'ah means entrustment or Amanah. The word Al-wadi'ah comes from the word wada'a (wada'a – yada'u – wad'aan) also means to let or forsake. something. So in simple terms wadi'ah is something that is deposited. In Indonesian wadi'ah means deposit. This wadi'ah agreement is a helping character between human beings (Yunus, 2005). In practice and development in terms of muamalah contained also hammering Islamic fiqh. The principle relating to al-wadi'ah is also defined as a pure entrustment from one party to another and must be maintained at any time until including when the depositor or one of the parties. If we refer to Law No. 21 concerning Sharia Banking, the word wadi'ah contract is a custody agreement between the party who owns goods or money and the party who is entrusted with the aim of maintaining the safety, security and integrity of goods or money. In the implementation of wadi'ah must meet certain pillars and conditions. According to the scholars of the Hanafi Madzhab, there is one pillar of al-wadi'ah namely ijab and qabul while the other includes conditions and does not include harmony. Meanwhile, according to the number of scholars, *there are four* pillars of wadi'ah, namely:
   a. Mudi (One Who)
   b. Wadii' (Entrusted Person)
   c. Wadi'ah (Goods Deposited)
   d. Sighat entrusment(ijab and qabul)

   While the conditions are divided into three types. The person who is committed or mudi that is, should be the one who does in good health (not crazy). Among them are puberty, intelligence and self-will without any coercion. In the Hanafi school puberty and reason are not requirements for people who are contracting, so a child performs a wadi'ah contract on condition that it is permitted by his guardian. While at the point of wadi'ah or goods deposited. There are two conditions. The first is the condition of the entrusted object, namely the object entrusted must be an object that can be stored. If the object cannot be stored, then wadiah is not valid if lost, so it does not have to be replaced. This requirement was put forward by Hanafite scholars. While Shafi'iyah and Hanabilah require that the objects deposited must be objects that have value or qimah and are considered maal, even though they are unclean. If the object has no value, such as a dog that has no benefit, then wadi'ah is invalid. While Sighat (*contract*). The condition is that both parties make a contract between the person who entrusts (*mudi'*) and the person who is entrusted (*wadi'*). In banking, it is usually marked by the signing of a letter / proof of storage book.

2. Ijarah Contract
   The ijarah contract is a lease agreement. The term "ijarah" is derived from the word "al-ajru," which linguistically means "al-iwadh," translated in Indonesian as replacement or compensation. In terms of the contract, ijarah can be defined as an agreement that allows the permitted use and intentional benefit from a leased asset in exchange for compensation (Suhendi, 2010). Therefore, the ijarah contract can be understood as an agreement between multiple parties, whether individuals or legal entities, regarding a lease agreement for either goods or services, provided there is willingness and mutual consent. This type of contract is the most frequently performed by notaries. This lease contract has three essential elements:
   a. Aqid covers the mu'jir (the lessor) and musta'jir (the lessee).
   b. Ma'qid 'Alaih (the subject of lease) includes ujrah (rent) and manfaat (benefits of the leased item).
   c. Shigat 'Ijab Qabul (offer and acceptance) consists of the following expressions: The mu'jir says, "I lease this item to you," and then the musta'jir responds, "Yes, I am renting this item from you."

3. Musharakah Agreement

Musyarakah or syirkah linguistically means al-ikhtilah, which signifies mixing or combination, as stated by Takiyuddin. The intended mixture here is when someone combines their wealth with that of another to the extent that they cannot be distinguished. Meanwhile, in terminology, musyarakah or syirkah according to Sayyid Sabiq is(Suhendi, 2010):

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The agreement between two individuals to pool resources (capital) and profits.
The partnership or musyarakah is said to have three pillars:

a. *Aqidani* (two unionized parties).
b. *Ma'qud'alaih* (goods akadi/capital)
c. *Shighat 'Ijab qabul* (handover speech).

In the various types of Sharia contracts above, it can be understood that notaries can be involved in various types of contracts. The involvement of notaries is contained and regulated in article 16 of the notary office law relating to the authority of the notary office where it is stated that notaries can be authorized or have authority in providing authentic properties or in making authentic deeds or agreements to both parties who transact or enter into agreements. This growing form of authority is actually something that has been stated in the notary office law before it was enacted or the rampant practice that uses sharia contracts (Hutagalung, 2021).

This is because in the point of view of Islamic law are indeed two types of transactions that differ between agreements or transactions that are usually carried out by notaries in conventional agreements with agreements or contracts that use sharia principles. But this is no different when viewed from the perspective of state law. Because any type of transaction or agreement practiced by the community, especially in Indonesia, which is valid in the eyes of the law, is one that has legality by the ministry or officials or agencies that can authorize the transaction regardless of using conventional principles or using sharia principles. In other words, the use of the name of the sharia contract only lies in the difference in name and some principles that are also contained in the law or qanun or regulations governing the sharia agreement or contract. In other words, if the party to the agreement then uses principles or rules that have no legality in the law governing the contract using the principles of sharia, then it can be said that the agreement is damaged or even cannot be authentic, even though in a religious point of view it is a permissible and legal thing to do (Mashdurohatun, 2011).

If clearly understood, it is controversial. Because it is contrary between the practice carried out by those who make agreements with the principles that can be done in the point of view of the state. Because anything that can be done and practiced in a country must have legality or in other words allowed to be practiced in the country which of course is evidenced by regulations or provisions or rules that can legalize the principle because indeed in Indonesia in particular is not a country that constitutionally applies sharia principles as a whole. Indonesia is a country that uses the basis of the state in the form of a constitution or in other words what is constitutionally valid and positive law, although in practice the Indonesian people consciously or unconsciously use many sharia principles in everyday life, including in making agreements in the economic realm because the majority of people are Muslim (Yasin, 2018). As previously stated, sometimes there are several authorities included in the realm of notaries as well as the domain of other government agencies or bodies that are usually represented through financial institutions or the like whose functions are like notaries who can issue an authentic deed. This time, as happened to many Islamic financial institutions in the form of Islamic banks, all kinds of containing or written evidence issued by them are included in an authentic deed or in other words a deed that has evidentiary value, legal certainty value and also justification value to parties who make agreements with each other.

Notary Ethics

The ethics in question can be broadly understood as the way or method a notary can behave and behave as an appropriate notary. There are two ways to understand ethics or rules that bind notaries in exercising their authority, namely the first that is formal or binding in writing and the second is that which is binding unwritten. Notary ethics that are bound in writing are intended in the form of rules governing notaries that have been ratified or contained in regulations either in the form of general agreements or in the form of laws.

1. Based on Regulation

   As one of the legal professions, of course, notaries can be said to behave and act based on the rules that instruct notaries to behave like this, In other words, notary behavior or attitude must certainly be based on the provisions of the rules. Regarding the rules of this behavior, of course, it has also been regulated and determined as explained also contained in several regulations that are legality for notaries. Some of these regulations include:

   a. Law Number 40 of 2007 Concerning Limited Liability Companies.
   b. Law Number 2 of 2014 Concerning Amendments to Law Number 30 of 2004 Concerning Notary Positions.
   c. Notary Code of Ethics (Indonesian Notary Association)

   Apart from some laws that bind notaries, there are also several provisions contained in these rules that bind notaries not to carry out some attitudes or call it a notary prohibition based on the lens of the law. There are at least 37 notary prohibitions which, if violated, can lead to administrative sanctions, namely (Salim, 2018):

   1) Not exercising office in real terms;
   2) Not delivering the minutes of the oath / promise of office of notary;
   3) Not providing the office address;
   4) Acting dishonestly, not sexy, not independent, taking sides and not safeguarding the interests of the parties involved in legal actions;
   5) Not making a deed in the form of a deed minuta and storing it as part of the notary protocol;
   6) Not issuing a deed groose, a copy of the deed, or a deed quotation based on the deed minuta;
   7) Not providing maximum service to the community or its clients;
   8) Do not keep secret everything about the deed he made and all the information obtained for the making of the deed;
   9) Do not bind the deed made in 1 (one) month into a book containing no more than 50 deeds, and if the number of deeds cannot be contained in one book, the deed can be bound into more than one book, and record the number of minuta of deeds, months, and years of manufacture and covers on each book.
   10) Not make a list of deed of protest against non-payment or non-receipt of securities;
   11) Do not list deeds relating to wills in the order of time of making deeds each month;
   12) Not send a list of wills or a list of nil pertaining to a will to the central register of wills of departments whose duties and responsibilities are in the field of notarial affairs within 5 days of the first week of each subsequent month;
   13) Not recording in the repertorium the date of sending the list of wills at the end of each month;
   14) Do not have a stamp / stamp containing the state emblem of the Republic of Indonesia and on the space surrounding it is written the name, position, and place of residence concerned;
   15) Not reading the deed in front of the face in the presence of at least 2 witnesses and signed at that time by the face, witnesses, and notary;
   16) Not accepting apprentices of notary candidates;
   17) Exercise office outside the area of office;
   18) Leave his/her office for more than 7 consecutive working days without a valid reason;

19) Concurrently serving as a Civil Servant;
20) Concurrently serving as a State Officer;
21) Concurrently serving as an advocate;
22) Concurrently hold positions as leaders or employees of state-owned enterprises, regional-owned enterprises or private-owned enterprises;
23) Concurrently serving as a land deed making officer (PPAT) and / or class II auction official outside the notary seat;
24) Become a substitute notary;
25) Perform other work contrary to religious norms, decency, or decency that may affect the honor and dignity of the notary office;
26) Have more than 1 office address;
27) The seat of the Land Deed Making Office is outside the notary's place of residence and carries out his office successively outside his position;
28) Carry out leave but do not submit the notary protocol to a substitute notary;
29) The substitute notary does not resubmit the notary protocol to the notary after the leave ends;
30) Not making minutes of handover of notary protocols;
31) Not providing legal services in the field of notarial affairs free of charge to people who are not able;
32) Give, show or notify persons who are not directly interested in making the deed about:
    a) Fill in the deed
    b) Groese deed
    c) Copy of deed, and
    d) Deed citation
33) Not making a list of deeds
34) Not making a list of letters under the authorized hand.
35) Do not make a list of letters under the hand that are booked.
36) Not to list other letters reguired by law
37) Do not make a klapper list for the list of deeds and the list of letters under the passed hand.

All of the above prohibitions are cumulative and also alternative, which means that all types of violations above can be carried out simultaneously. However, on the other hand, even one violation committed by a notary related to the above prohibition is enough reason for a notary to be sentenced or administrative sanctions.

2. Based on Islamic Law

Ethics or rules that bind notaries unwritten are principles that bind notaries personally because of religious demands. Broadly speaking, the ethics that bind notaries here are morals where morals are a description of the form of birth or nature of humans that bind a Muslim in general and also the specific principles imposed by nash on a Muslim. However, if referring to the research conducted by Siti Zulaikha, according to her, there is a basic foundation in a profession, especially in the realm of law, both judges and all kinds of derivatives, there are several basic principles that are emphasized in Islamic studies, namely (Nasir, 1991):

a. Principle of freedom; As human beings have freedom both moral independence and moral courage which are limited by applicable norms.
b. Fairness; that is, to treat man equally by giving what is rightfully his.
c. Honesty; That is, in law enforcement must be based on honesty in conscience and truth of reason (ratio) and of course by sticking to state rules because what should be done based on the law will certainly contain justice and truth in society.
d. The principle of free will; that is, human beings although limited by existing norms but have free will. This is also based on the interests or needs imposed on the notary by the

client is a muamalah issue which is basically muamalah but still based on the value of justice as the basic principle of religion.

e. The principle of responsibility; that is, as a demand of free will, that is, the existence of accountability as a limitation of what humans do and must be accounted for.

4. CONCLUSION

Based on the explanation above, it can be concluded that a Notary is a general official appointed by the minister as a state representative to issue authentic deeds without salary from the government but only through clients who use their services. The notary is charged with a very limited but broad authority in the type of agreement or contract to which he can issue an authentic deed. The authority restrictions in question are things that are prohibited under the notary position law to do which are also contained in the notary code of ethics formulated by the Indonesian Notary Association. Regardless of the background of a notary, whether a Muslim or not, notaries are required to behave professionally, which means being able to carry out their authority and duties in accordance with the legal corridors legalized to them. Meanwhile, if a notary is faced with making a deed with a contract model that uses sharia principles, then in a legal point of view only sharia principles can be used which have been legal in the point of view of state law. Many types of contracts that have been legalized are stated through policies or authorities currently held by Islamic financial institutions or the like because all kinds of deeds issued by them are also considered authentic Atta or deeds that can have the force of legal value. Apart from the attachment of notaries to the rules that legalize their authority in Islam, 5 basic principles related to the professionalism of a legal profession are known, namely the principle of freedom, the principle of justice, the principle of honesty, the principle of free will, the principle of responsibility.

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